

REMEDIES & ENFORCEMENT

UNIT: GOVERNANCE SURVEILLANCE & ENFORCEMENT (GSE)

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Companies and Intellectual
Property Commission

a member of **the dti** group

CIPC Enforcement Objective

To ensure the efficient, effective and widest possible enforcement of the Companies Act 71 of 2008 (as amended) and any other legislation listed in **Schedule 4** of this Act

Categories of Enforcement

Enforcement can be divided into two categories, i.e.

- Alternative Dispute Resolution (“ADR”)
- Investigations of complaints

Alternative Dispute Resolution

ADR a alternative to applying for relief to a court, or filing a complaint with the CIPC

- **Primarily a Companies Tribunal function**
- Types of “contraventions” suitable for ADR
- Companies Tribunal assist in the resolution of dispute through ADR process.
- The use of ADR process by the complainant is voluntary
- The other party must agree to the use of ADR in terms of **section 166** of the Act. If the party is not participating , in good faith, the Tribunal must issue a certificate in a prescribed form stating that ADR process has failed.
- Companies Tribunal that has resolved a dispute or helped the parties to resolve a dispute may record the resolution in the form of an order.

Consent Orders

- **Section 173 - Consent orders**
 - Consent order seeks to resolve matter between CIPC
 - and the respondent
 - High court must confirm consent order in terms of its rules
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 - A confirmed consent order may include damages

Alternative Dispute Resolution (cont.)

CIPC ADR process:

- Complete **Form CTR 132.1** to approach the Companies Tribunal with the request and submit to:
- Emails: Registry@companiestribunal.org.za;
Tmputle@companiestribunal.org.za
- Contact Numbers: Tel: (012) 394 3071, (012) 394 1992,
Fax: (012) 394 4071
- Website: www.companiestribunal.org.za

Investigation of Complaints

The authority to investigate is prescribed in section 168 read with section 209 of the Act:

Section 209 – Appointment of Inspectors

- The Commissioner must furnish the inspector with a certificate of appointment in order to carry out an investigation

Section 176 to 179 – Powers to support investigations

- The Commissioner may issue a summons to a person, who is believe to be able to furnish information or documents relevant to an investigation, to appear before an inspector

Initiating a Complaint

- **Section 168 – Initiating a complaint**

PROVISION IN THE 2008 ACT (Section 168)	PERTINENT ISSUES
<p>Initiating a complaint</p> <p>168. (1) Any person may file a complaint in writing —</p> <p>(a) with the Panel in respect of a matter contemplated in Part B or C of Chapter 5, or in the Takeover Regulations: or</p> <p>(b) with the Commission in respect of any provision of this Act not referred to in paragraph (a), alleging that a person has acted in a manner inconsistent with this Act, or that the complainant’s rights under this Act, or under a company’s Memorandum of Incorporation or rules, have been infringed.</p> <p>(2) A complaint may be initiated directly by the Commission, or the Panel, as the case may be, on its own motion or on the request of another regulatory authority.</p> <p>(3) The Minister may direct the Commission, as contemplated in section 190(2)(b), or the Panel to investigate—</p> <p>(a) an alleged contravention of this Act: or</p> <p>(b) other specified circumstances.</p>	<p>Any person may file a complaint with the Commission by completing Form CoR 135.</p> <p>The complaint must be:</p> <ul style="list-style-type: none"> - in writing, - in respect of any provision of this Act - alleging that a person has acted inconsistently <ul style="list-style-type: none"> - with this Act, or - complainant’s rights under <ul style="list-style-type: none"> - this Act, or - under a company’s MOI or - rules have been infringed. <p>A complaint may be initiated directly by the Commission:</p> <ul style="list-style-type: none"> - on its own motion or - on the request of another regulatory authority. <p>The Minister may direct the Commission to investigate</p> <ul style="list-style-type: none"> - an alleged contravention of this Act: or - other specified circumstances.

Complaints to address alleged contraventions

- A complaint relating to an alleged contravention of the Act may be reported to CIPC as follows:
 - Complete a Form CoR135.1; and
 - Submit the completed CoR135.1 to email address: CoR135.1complaints@cipc.co.za
- Enquiries: Must be lodged on CIPC website: www.cipc.co.za/enquires
- Please ensure that you substantiate your allegations. If the allegations do not constitute grounds for remedy under the Companies Act 2008, it will not be investigated.

Offences – Civil and/or Criminal

- **Section 22(1)** – Reckless Trading prohibited
- **Section 22(2) & 22(3)** – Reckless Trading prohibited
- **Section 26 (9)** – Access to company records
- **Section 28 (3)** – Accounting records
- **Section 29 (6)** – Financial statements
- **Section 31 (4)** – Access to financial statements or related information

Offences (cont.)

- **Section 32 (5)** – Use of a company name and a registration number
- **Section 214** – False statement, reckless conduct and non compliance
- **Section 215** – Hindering administration of Act

Outcome of Investigations

- **Section 170** – Outcome of investigation:

Commission may —

- (i) excuse a respondent;
- (ii) refer the complaint to the Companies Tribunal;
- (iii) issue a notice of non-referral to complainant;
- (iv) resolve matter by consent order;
- (v) commence proceedings in a court in the name of the complainant;
- (vi) refer the matter to the NPA, or other regulatory authority;
- (vii) issue a compliance notice in terms of section 171.

Compliance Notices

- **Section 171** – Issuance of compliance notices
 - Issued to person who has contravened or benefited from contravening the Act
 - Notice requires certain action to be preformed by the person to whom it is addressed to
 - Information contained in a Notice
 - Notice remains in force until set aside by Companies Tribunal or a court or when CIPC issues compliance notice
 - Failure to comply with notice empowers CIPC to either apply to a court for an administrative fine or refer matter to NPA for prosecution

Referral of Complaints to Court

- **Section 174 - Referral of complaints to court**
 - If CIPC issues notice of non-referral, complainant may apply to a court for leave to refer the matter directly to the court
 - A court may grant leave under certain circumstances
 - Court may impose certain remedies

Administrative fines

Section 175 - Administrative fines

- Under certain circumstances a court, on application by the Commission, may impose an administrative fine
- Specific factors must be taken into consideration when determining the amount of an administrative fine
- A fine must be paid into the National Revenue Fund referred to in section 213 of the Constitution
- The Minister may make a regulation prescribing the maximum amount of an administrative fine, which amount must be not less than R1 000 000.00

Thank You

Questions?